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SUPREME COURT, U.S.
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No. 02-132

IN THE
SUPREME COURT OF THE UNITED STATES

MOBIL CORPORATION AND HONEYWELL INTERNATIONAL, INC.,
Petitioners,
v.
BRUCE W. ADKINS, et al.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Appeals of West Virginia

RESPONSE OF ARGO PACKING COMPANY AND 35 OTHER RESPONDENTS IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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CORPORATE DISCLOSURE STATEMENTS

Respondent A.W. Chesterton Company is a closely held corporation owned by various members of the Chesterton family and no publicly held corporation owns 10% or more of its stock.

Respondent A&I Company ("A&I") had no parent corporations and no publicly held companies owned 10% or more of A&I stock. A&I filed papers of dissolution on November 5, 1999.

Respondent A-Best Products Company, Inc. states that no publicly held company owns 10% or more of its stock.

Respondent Argo Packing Company states that no publicly held company owns 10% or more of its stock.

Respondent Asarco Inc. states that no publicly held company owns 10% or more of its stock.

Respondent Atlas Industries, Inc. ("Atlas") has no parent corporations, and no publicly held companies own 10% or more of Atlas' stock.

Respondent Beazer East, Inc., a Delaware company, is wholly owned by Hanson Holdings Basalt, Inc., which is also a Delaware company. Hanson Holdings Basalt, Inc. is wholly owned by Hanson Holdings Aragonite, Inc., which is also a Delaware company. Hanson Holdings Aragonite, Inc. is wholly owned by Hanson Building Materials America, Inc., which is also a Delaware company. Hanson Building Materials America, Inc. is wholly owned by Hanson, plc, which is a publicly traded London company.

Respondent CertainTeed Corporation is an indirect, wholly-owned subsidiary of Compagnie de Saint-Gobain, Paris, France. CertainTeed has no other parent company that is publicly held. No other publicly-held company owns stock in Certain-Teed Corporation, and no publicly-held company owns more than 10% of the stock of Compagnie de Saint-Gobain.

Respondent Combustion Engineering, Inc. is a wholly owned subsidiary of Asea Brown Boveri, Inc., which is not a publicly held corporation. ABB Ltd is a Swiss corporation which is a publicly held corporation and it is the ultimate parent corporation of Combustion Engineering, Inc. and Asea Brown Boveri, Inc.

Respondent Ericsson, Inc's parent company is a Swedish Corporation, Telefonaktiebolaget L M Ericsson. Telefonaktiebolaget L M Ericsson has two companies who own more than 10% of the voting rights, Investor AB and AB Industrivärden.

Respondent Fairmont Supply Company states that 100% of its stock is owned by CONSOL Energy, Inc.

Respondent Famous Supply Company states that no publicly held corporation owns 10% or more of its stock.

Respondent Flowserve Corporation (formerly known as Durametallic Corporation) states that no publicly held corporation owns 10% or more of its stock.

Respondent Foster Wheeler L.L.C., survivor to a merger with Foster Wheeler Corporation, is the wholly owned subsidiary of Foster Wheeler Ltd. Foster Wheeler Ltd. has no parent corporations, and no known publicly held company owns 10%

or more of Foster Wheeler Ltd. stock.

Respondent Foster Wheeler Energy Corporation is the wholly owned subsidiary of Foster Wheeler Power Group, Inc. Foster Wheeler Power Group, Inc. is the wholly owned subsidiary of Foster Wheeler Inc. Foster Wheeler Inc. is the wholly owned subsidiary of Foster Wheeler L.L.C. The parent of Foster Wheeler L.L.C., survivor to a merger with Foster Wheeler Corporation, is Foster Wheeler Ltd. Foster Wheeler Ltd. has no parent corporations, and no known publicly held company owns 10% or more of Foster Wheeler Ltd. stock.

Respondent Geo. P. Rientjes, Inc. states that no publicly held company owns 10% or more of its stock.

Respondent George V. Hamilton, Inc. states that no publicly held company owns 10% or more of its stock.

Respondent Georgia-Pacific Corporation states that no publicly held company owns 10% or more of its stock.

Respondent Greene, Tweed & Co., Inc. ("Greene, Tweed") is wholly owned by Greene, Tweed of Delaware, Inc. Greene, Tweed of Delaware, Inc. has no parent corporations, and no publicly held companies own 10% or more of Greene, Tweed of Delaware's stock.

Respondent Hobart Brothers Company, an Ohio corporation, is a wholly owned subsidiary of Illinois Tool Works Inc., a publicly traded company. No publicly traded company owns 10% or more of the stock of Illinois Tool Works Inc.

Respondent Insul Company, Inc. ("Insul") has no parent corporations, and no publicly held companyies own 10% or

more of Insul's stock.

Respondent Joy Technologies, Inc. states that 100% of its stock is owned by Joy Global, Inc.

Respondent Lac d'Amiante du Quebec, Ltee states that no publicly traded company owns 10% or more of its stock.

Respondent Lockheed Martin states that the following entities owned 10% or more of its stock as of February 28, 2002 (as filed with the SEC on Schedule 13G pursuant to Section 16(a) of the Securities Exchange Act of 1934):

> State Street Bank and Trust Company, acting in various fiduciary capacities, 3 Pinehill Drive, Batterymarch III, Quincy, MA 02169: 19.6%
>
> U.S.Trust Company, National Association as Trustee for Lockheed Martin Corporation Defined Contribution Plan, 515 Flower Street, #2800, Los Angeles, CA 90071: 19.0%
>
> FMR Corporation, 82 Devonshire Street, Boston, MA 02109: 9.226%

Respondent MagneTek, Inc. ("MagneTek") has no parent corporations, and no publicly held companies own 10% or more of MagneTek's stock.

The parent company of Maremont Corporation is ArvinMeritor, Inc. ArvinMeritor, Inc., a publicly held company, owns 100% of the shares of Maremont Corporation.

Respondent Melrath Gasket, Inc. states that no publicly held

company owns 10% or more of its stock.

Respondent Nitro Industrial Coverings, Inc. ("NICO") had no parent corporations, and no publicly held companies own 10% or more of NICO's stock.

Respondent Oglebay Norton Company, Inc. states that no publicly held company owns 10% or more of its stock.

Respondent Pacific Parts, Inc. states that no publicly held company owns 10% or more of its stock.

Respondent Robertson Ceco Corporation ("Robertson") , successor to H.H. Robertson Company, is a private corporation. Robertson has no parent corporations and no publicly held companies own 10% or more of Robertson's stock.

Respondent Steel Grip, Inc. states that no publicly held company owns 10% or more of its stock.

All shares of The BOC Group, Inc., a Delaware corporation, are owned by BOC, Inc., a Nevada corporation, which is wholly owned by BOC Holdings, an English corporation, which is wholly owned by The BOC Group plc. No publicly held company owns 10% or more of the stock of The BOC Group, Inc.

The Lincoln Electric Company is a wholly-owned subsidiary of Lincoln Electric Holdings, Inc., a publicly-traded company. No publicly-traded company owns 10% or more of the stock of Lincoln Electric Holdings, Inc.

Respondent The Okonite Company has no parent corporation and no publicly owned companies own any of its stock.

Respondent Union Boiler Company states that no publicly held company owns 10% or more of its stock.

Respondent Universal Refractories Corporation, formerly a division of Thiem Corporation, was merged into Thiem Corporation in 1976. Thiem Corporation was dissolved in 1991 pursuant to the Delaware Corporation Code. Consequently, neither entity has a parent corporation. No publicly held companies own 10% or more of the stock of either entity.

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The 36 respondents listed herein respectfully submit this response in support of the petition for a writ of certiorari pursuant to Supreme Court Rule 12.6. As demonstrated below and in the petition filed by Mobil Corporation and Honeywell International, Inc., this Court's review is necessary to address the important and urgent constitutional questions raised by the consolidation of thousands of individual cases for trial.

REASONS WHY THE PETITION SHOULD BE GRANTED

The trial which is scheduled to take place on September 23, 2002 will be the seventh asbestos personal injury "mass liability trial" to be scheduled or take place in the West Virginia state courts[1]. The first consolidated asbestos mass liability trials which took place in West Virginia occurred before the decisions in Amchem Prods. Inc. v. Windsor, 521 U.S. 591 (1997), Ortiz v. Fibreboard Corp., 527 U.S. 815 (1999), Malcolm v. Nat'l Gypsum Co., 995 F.2d 346 (2nd Cir. 1993), and In re Chevron U.S.A., Inc., 109 F.3d 1016 (5th Cir. 1997) were published.

If there was ever any doubt concerning the unconstitutionality of the mass trial procedure adopted by the West Virginia state courts, that doubt has been removed. A large-scale, aggregated liability trial of the type and scope contemplated cannot take place without violating the parties' rights to due process of law. Yet the West Virginia state courts continue to aggregate thousands of asbestos personal injury cases for a single trial without making any inquiry into the

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[1]None of the West Virginia mass trials which have taken place to date have included any defendants sued under a premises liability theory.

commonality of the claims or into what prejudice would result from the consolidation.

Given the manner in which this group of cases have been filed and consolidated it is difficult to determine the precise number of individual claims involved. The petition lists approximately 250 defendants who are parties to this consolidated trial (Petition, at ii; App. 147a-156a). It appears that tens of thousands of individual (one plaintiff versus one defendant) claims have been aggregated for a single "mass liability" trial in the Circuit Court of Kanawha County, West Virginia on September 23, 2002. This consolidation of tens of thousands of individual claims for a single trial deprives all parties of their rights to due process of law, and is fundamentally unfair and flawed.

CONCLUSION

For the reasons set forth in this response, and for the reasons set forth in the petition filed on behalf of Mobil Corporation and Honeywell International, Inc., the petition should be granted.

Respectfully submitted,

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